

MARKUP OF RULE 15 SHOWING PROPOSED AMENDMENTS

Original language = typeface without underscore

Strikethrough = removed

Underscore = addition to rule

Rule 15 Interlocutory Appeal

(Applicable to District Court and Superior Court)

(a) Right of Interlocutory Appeal.

(1) Right of Appeal Where Pretrial Motion to Dismiss or for Appropriate Relief Granted. The Commonwealth shall have the right to appeal to the Appeals Court ~~appropriate appellate court~~ a decision by a judge granting a motion to dismiss a complaint or indictment or a motion for appropriate relief made pursuant to the provisions of ~~subdivision (e) of Rule 13(c)~~.

(2) Right of Appeal Where Motion to Suppress Evidence Determined. A defendant or the Commonwealth shall have the right and opportunity to apply to a single justice of the Supreme Judicial Court, in the form and manner prescribed by a standing order of that court, for leave to appeal an order determining a motion to suppress evidence prior to trial. If the single justice determines that the administration of justice would be facilitated, the justice may grant that leave and may hear the appeal or may ~~report~~ order it to the full Supreme Judicial Court or to the Appeals Court for determination.

~~(3) Right of Appeal Where Transfer of Delinquency Proceeding is Denied. The Commonwealth shall have the right to appeal to the Appeals Court a decision by a judge denying transfer of a delinquency proceeding pursuant to G. L. c. 119, § 61. (Reserved)~~

(4) Probable Cause Hearings. No interlocutory appeal or report may be taken of matters arising out of a probable cause hearing.

(b) Procedural Requirements.

(1) Time for Filing Appeal. An appeal under Rule 15 ~~subdivisions(a)(1) and (a)(3)~~ shall be taken by filing a notice of appeal in the trial court within thirty days of the date of entry of the order being appealed. An application for leave to appeal under Rule 15 ~~subdivision(a)(2)~~ shall be made by filing within thirty ~~ten~~ days of the ~~issuance of notice~~ date of entry of the order being appealed, or such additional time as either the trial judge or the single justice of the Supreme Judicial Court shall order, (a) a notice of appeal in the trial court, and (b) an application to the single justice of the Supreme Judicial Court for leave to appeal.

(2) Record. The record for an interlocutory appeal shall be defined and assembled pursuant to Massachusetts Rule of Appellate Procedure 8. _____

(3) Findings. The judge shall make all findings of fact relevant to the appeal or the application for leave to appeal within the period specified in Rule 15-subdivision~~(b)(1)~~ for filing the notice of appeal.

(c) Determination of Motions. Any motion the determination of which may be appealed pursuant to this rule shall be decided by the judge before the defendant is placed in jeopardy under established rules of law.

(d) Costs upon Appeal. If an appeal or application therefor is taken by the Commonwealth, the appellate court, upon the written motion of the defendant supported by affidavit, shall determine and approve the payment to the defendant of his or her costs of appeal together with reasonable attorney's fees to be paid on the order of the trial court upon the entry of the rescript or the denial of the application.

(e) Stay of the Proceedings. If the trial court issues an order which is subject to the interlocutory procedures herein, the trial of the case shall be stayed and the defendant shall not be placed in jeopardy until interlocutory review has been waived or the period specified in Rule 15~~subdivision~~~~(b)(1)~~ for instituting interlocutory procedures has expired. If an appeal is taken or an application for leave to appeal is granted, the trial shall be stayed pending the entry of a rescript from or an order of the appellate court. If an appeal or application therefor is taken by the Commonwealth, the defendant may be released on personal recognizance during the pendency of the appeal.